



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

VIA ELECTRONIC MAIL

Paul N. De Santis
Chief of Legal and Regulatory Affairs
Baltimore City Department of Public Works
300 Abel Wolman Municipal Building
200 North Holliday St.
Baltimore, MD 21202
Paul.Desantis@baltimorecity.gov

Re: United States and State of Maryland v. Mayor and City Council of Baltimore
Civil Action No. JFM-02-1524

Dear Mr. De Santis:

The U.S. Environmental Protection Agency (EPA) is in receipt of the City of Baltimore's March 23, 2020 letter notifying EPA and the Maryland Department of the Environment (MDE) of a *force majeure* event that may cause a delay or impediment to complying with certain provisions of the Modified Consent Decree in Civil Action No. JFM-021524 (the MCD). As you may be aware, on March 26, 2020, EPA issued a temporary Policy: "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program¹" (Policy) that addresses EPA enforcement of environmental legal obligations during this time. As provided in Section I.C of the Policy, claims of an inability to comply with the terms of a judicial consent decree are properly handled pursuant to the consent decree's *force majeure* provisions.

Baltimore's notice asserts a *force majeure* event based on the current COVID 19 public health emergency. The EPA has discussed with MDE Baltimore's assertion of force majeure. MDE will respond separately. The EPA has consulted the U.S. Department of Justice (DOJ) with preparing this response.

This response is intended to cover the facilities that are the subject of the above-referenced CD and directs the City of Baltimore to Section XI of the CD. Baltimore should note that Paragraph 45 of the MCD requires it to adopt all reasonable measures to avoid or minimize any delays caused by a *force majeure* event.

Baltimore's March 23, 2020 letter explained that due to the COVID-19 pandemic, the state emergency declaration, and concern for the health of the city employees, contractors and the public, Baltimore may need to suspend ongoing work on the CD Phase I projects which could result in delays in complying with the CD. However, the *force majeure* provisions set forth in Section XI of the CD requires more information than what is set forth in Baltimore's March 23, 2020 letter. The *force majeure*

¹ <https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf>



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Section of the CD requires that the notice should at a minimum describe in detail the precise cause or causes of the delay, the anticipated length of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable for those measures. Baltimore should also identify the specific projects which Baltimore will not be able to complete by the deadlines specified by the CD due to the *force majeure* event. Because of the uncertainty surrounding the COVID-19 public health emergency, we understand that Baltimore may not have complete information at this time, but it should provide additional information in accordance with that Section as more information becomes available.

In addition to compliance with the express provisions of the CD, we believe that it will be productive for Baltimore to maintain an open and continuing dialogue with EPA, DOJ, and MDE. This will serve to protect human health and the environment, minimize potential misunderstandings, and facilitate timely and appropriate decision-making as this situation unfolds. Should you have any questions regarding the above or any aspect of this matter, please do not hesitate to contact: Kaitlin McLaughlin (McLaughlin.Kaitlin@epa.gov or 215-814-2393) or Nina Rivera (Rivera.Nina@epa.gov or 215-814-2667).

EPA has also received Baltimore's May 8, 2020 notice of potential delay, caused in part by the effects of the COVID-19 pandemic. EPA will review that letter and respond to that letter separately as appropriate.

Sincerely,

Karen Melvin, Director
Enforcement & Compliance Assurance Division

cc: Nina Rivera, EPA/ORC (Rivera.Nina@epa.gov)
Sharon Talley, MDE (Sharon.Talley@maryland.gov)
Ellen Cohill, OAG-MDE (Ellen.Cohill@maryland.gov)
James Vinch, EPA/OECA (Vinch.James@epa.gov)
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